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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th February 2007

No. 1710-II/1(BH)-54/2000-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated the 8th January 2007 in Industrial Disputes Case No. 2 of 2004 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of Orissa Forest Development Corporation Ltd., Dhenkanal (C) Division, Dhenkanal/The Managing Director, Orissa Forest Development Corporation Ltd., Bhubaneswar and its Workman Shri Ninaketan Pradhan was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 2 OF 2004
Dated the 8th January 2007

Present:

Sh. Jan Hossain, o.s.j.s (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between:

- (1) The Management of Orissa Forest Development Corporation Ltd., Dhenkanal (C) Division, Dhenkanal. First Party—Management
- (2) The Managing Director, Orissa Forest Development Corporation Ltd., Bhubaneswar. Second Party—Workman

And

Their Workman Shri Ninaketan Pradhan, ... Second Party—Workman
S/o Anirudha, At Sanahindol,
P. O. Bolano, District Dhenkanal.

Appearances :

For the First Party Managements	Shri S. K. Patnaik, Advocate
For the Second Party Workman	Shri S. B. Dash, Advocate

AWARD

The Government of Orissa in the Labour & Employment Department initially referred the following dispute to the Presiding Officer, Labour Court, Bhubaneswar for adjudication in exercise of its powers conferred upon them by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), but at a subsequent stage on consideration of the representation of the workman and in exercise of powers conferred by sub-section (1) of Section 33 (B) of the Industrial Disputes Act, it withdrew the dispute pending before the Presiding Officer, Labour Court, Bhubaneswar and transferred the same to this Tribunal for adjudication vide Order No. 1513—II/1 (BH)-54/2000-LE, dated the 12th February 2004.—

"Whether the retrenchment/termination of Shri Ninaketan Pradhan, Ex-D. W. by the Management of O.F.D.C. Ltd., Dhenkanal (C) Division, Dhenkanal with effect from the 1st January 1994 is legal and/or justified ? If not, to what relief Shri Pradhan is entitled ?"

2. The factual background in a nutshell is as follows :—

The second party workman (hereinafter referred to as the 'workman') filed a writ application for regularisation of his service as per the terms of employment and conditions of service with reference to the memorandum of settlement accepted by the parties under the provisions of the Industrial Disputes Act, 1947 (for short 'Act') on the 17th March 1980. The writ application was registered as O.J.C. No. 10005 of 1993. In the writ application the Hon'ble Court directed the first party management (hereinafter referred to as the 'management') to file its reply. Pursuant to the said direction the management filed reply disclosing that the workman has been terminated from service by way of retrenchment with effect from the 31st December 1993. The workman amended the writ application challenging the said order of retrenchment. The Hon'ble Court disposed of the writ application on the 5th July 2000 with a direction to the State Government to refer the dispute. Conciliation proceeding was started. As it failed, the Government of Orissa made a reference thereof purported to be an exercise of its jurisdiction under Section 10 (1) of the Act. It was registered as Industrial Dispute Case No. 2 of 2004. Both the parties filed their respective written statements.

3. The case of the workman as pleaded in the claim statement is that the management is an undertaking of the Government of Orissa and is functioning under the supervision of the Forest & Environment Department of the State Government. The main function and business of it was to deal forest products and to undertake plantation of commercial trees for the

purpose of sale and establishment of saw mills, factories and other manufacturing units for commercial purpose to meet the requirement of the public. It is functioning since 1962. The workman was appointed by the management with effect from the 1st December 1979 as a Field Assistant and was being paid wages on daily wage basis. Such payment of wages was made monthly by the authorities. After the enforcement of the Orissa Forest Corporation Ltd. Daily-rated/Consolidated Workers Service Regulation Rules, 1980 he made a representation for regularisation of his service and also to equalise his salary with that of the employees of similar cadre of the Corporation. The management put pressure to withdraw the claim. For that the workman filed writ application bearing No. 10005 of 1993. His services were illegally terminated by the management on the 31st December 1993 without any notice, notice pay and retrenchment compensation. No charge sheet was filed. It is according to the workman that Chapter V-B of the Act is applicable to the management as it is coming within the definition of 'industrial establishment' laid down in Section 25-L of the Act.

4. The management filed its written statement taking the stand that the workman was engaged on daily-rated basis in the seasonal establishment as and when required. He was not in continuous service. M/s Tata Consultancy Services, who are specialised regarding work study and requirement of manpower in an industrial establishment, studied the work-load and staff position in the Corporation and submitted a report showing surplus of employees to the requirement of the Corporation. It is said that the timber felling has been banned since 1990-91, bamboo operation has been transferred to the Raw Material Procurers, Paper Mills since 1993 and 8 Plantation Divisions with one circle had been transferred to Government on the 1st April 1997 and minor forest produce has been privatised since 1995. There was substantial reduction of workload and it became unable to pay salary to even the regular employees. Its financial condition has become very poor. Owing to acute dearth of work and poor financial condition, the management decided to retrench the employees and for that notices were issued wherein it was specifically averred that "his service is no longer required with effect from the 31st December 1993 afternoon". In the said notice the management offered one month's salary in lieu of notice and compensation as admissible under the Industrial Disputes Act. The workman did not accept the same and left the office premises without giving any intimation. Notice along with compensation amount and notice pay was sent to the workman by post which was returned undelivered. It is the contention of the management that Orissa Forest Development Corporation is a company registered under the Companies Act, 1956. It has got its own Articles of Association and Board of Directors to regulate the administration of the Corporation. According to it, the Corporation is an 'industry' but not an 'industrial establishment' as defined under Section 25-L of the Act. It has denied that the turnover of the Corporation is nearly 400 crores per annum, it has engaged more than 7000 employees and payment of more than 100 crores towards royalty. It is said that no offer of appointment was issued to the workman nor the recruitment rules applicable for filling up the posts of regular and temporary posts have been followed. The Corporation has its own Service Rules. It is contended that the provisions of other Labour Legislations are not applicable. While terminating the services of the workman the management had complied with the

mandatory requirements of Section 25-F of the Act. According to it, the management is not an 'industrial establishment' as defined under Chapter V-B of the Act. It is said that no junior to the workman is continuing in the organisation and there is no violation of Section 25-G of the Act and Rule 83 of the Orissa Industrial Disputes Rules, 1959. It is stated that 600 employees in different cadres working on daily wages were retrenched depending upon the workload and other surrounding factors. More than 100 employees though retrenched but they are continuing after obtaining stay orders from the Hon'ble High Court. It is submitted that the retrenchment order was not arbitrary or illegal as submitted by the workman. There was substantial reduction of workload of the Corporation, it incurred losses.

5. The Managing Director of the O.F.D.C. adopted the written statement filed by the management and further averred that from the year 1989-90 the Government of India imposed partial ban on felling of the reserved forest and the said ban was made absolute in the year 1991-92. A contention is raised that the forest operation is usually carried on from October to June and it remains suspended in the rainy season. During operational season the daily wage workers are engaged for forest operation. It contends that the Divisional Manager, Dhenkanal (C) Division had taken one saw mill of Forest Department at Choudwar wherein some timbers were being sawn and supplied to the customers as per the local needs. Due to ban there was substantial reduction of workload of the Corporation. Thus, there was introduction of Voluntary Retirement Scheme to reduce its regular establishment. Many divisions and subdivisions have been closed and merged with near divisions. 8 Afforestation divisions and one circle have been taken away from the Corporation. The cutting of bamboo was totally stopped.

6. The issues which are as under have been framed for adjudication :—

ISSUES

- (1) "Whether the retrenchment/termination of Shri Ninaketan Pradhan, Ex-D. W. by the Management of O.F.D.C. Ltd., Dhenkanal (C) Division, Dhenkanai with effect from the 1st January 1994 is legal and/or justified ?
- (2) If not, to what relief Shri Pradhan is entitled ?"

7. At the time of hearing the workman examined himself and got marked Exts. 1 to 6. On behalf of the management one witness was examined and reliance was placed on documents marked as Exts. A to J, and J/1, K, L, M, N, P, Q, R, S, T and U.

8. It is not the contention of the management that the second party is not a 'workman' within the meaning of Section 2.(s) of the Act. In fact, it is on that basis the management had issued the impugned termination notice to the workman invoking Section 25-F of the Act. The contention of the learned counsel of the workman is that since more than 100 employees are working in the 'industrial establishment', as such three months prior notice or pay in lieu thereof is mandatory. In view of this the order of retrenchment is wholly illegal. The second

contention is that the Forest Corporation is a factory as defined under clause (m) of Section 2 of the Factories Act where the manufacturing process is carried on by engaging the workman in cutting the trees by axe, changing the shape of the timber into logs by using machine driven saw. In the process a large number of workmen (more than 100 workmen) are working in the Corporation. Therefore, the Corporation being an establishment is within the definition of 'industrial establishment' under Section 25-L contained in Chapter V-B of the Act. The provision of Section 25-L of the Act will be applicable and without complying the procedure prescribed for retrenchment under Section 25-N of the Act, the order will be in nullity. Learned counsel for the management has submitted that till the date of retrenchment the workman was never regularised and absorbed in the services of the Corporation. He was rightly retrenched as there was substantial reduction of workload of the Corporation. There was a continuous process of retrenchment depending on the workload and other surrounding factors. No manufacturing process was being carried on in the Corporation. According to him, the retrenchment order was validly passed after complying with the provisions of Section 25-F of the Act.

9. It is not in dispute between the parties that the workman at the relevant time when the impugned termination order was passed against him was working under the management which had employed more than 100 workmen. In the light of this admitted fact it is now to be seen whether Section 25-F of the Act as invoked by the management would get attracted or Section 25-N of the Act would apply.

In order to apply Section 25-F or 25-N, it is necessary that the workman should be covered by the definition of Section 25-B of the Act. Section 25-B reads as under :—

"25-B : Definition of continuous service—For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman ;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer :—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine ; and

(ii) two hundred and forty days, in any other case ;

- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
- (i) ninety-five days, in the case of a workman employed below ground in a mine ; and
 - (ii) one hundred and twenty days, in any other case."

Sub-section (2) of Section 25-B provides that to consider the workman as in continuous service for one year, it is necessary that he should have worked for 240 days. Similarly, for application of Section 25-N again the pre-condition is that the workman has to be in continuous service for not less than one year.

10. The management relied upon the service particulars of the workman marked as Ext. A. It was issued by the Divisional Manager, Dhenkanal (C) Division. The workman in this case admittedly was in continuous service for the year 1992 and 1993. In other words, as appears from the exhibit, he worked for some days and discontinued to work after June 1983. Again he worked for some days in the year 1989 and thereafter discontinued to work after May 1989 till February 1991. Thus, it is clear that the workman was in continuous service for not less than one year in the year 1992-1993.

Learned counsel for the workman has placed reliance on Chapter V-B of the Act. Chapter V-B of the Act contains Section 25-K to 25-S. Section 25-K of Chapter V-B reads as under :—

"25-K. Application of Chapter V-B—(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final."

Learned counsel for the workman has also referred the provisions of Section 25-L and 25-N which read as under :—

"25-L. Definitions—For the purposes of this Chapter,—

(a) "industrial establishment" means—

- (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948) ;
- (ii) a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952) ; or
- (iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951).

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of Section 2,

- (i) in relation to any company in which not less than fifty one per cent of the paid up share capital is held by the Central Government, or
- (ii) in relation to any Corporation [not being a Corporation referred to in sub-clause (i) of clause (a) of Section 2] established by or under any law made by Parliament,

the Central Government shall be the appropriate Government."

"25-N. Condition precedent to retrenchment of workman—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government on the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the persons interested in such retrenchment, may having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall subject to the provisions of sub-section (6) be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

11. M. W. No. 1 Shri Braja Kishore Mohanty in his examination in chief has said that upon merger of the two Corporations with the Orissa Forest Corporation Ltd. It was seen that a large number of employees were engaged in the said two Corporations. M/s Tata Consultancy Service was entrusted to study and suggest the measures to be taken. He has also said that the expert body submitted its report in January 1993 in which it was pointed out that 3,281 numbers of regular employees were in excess compared to the works available. It appears that there is no cross-examination on the point.

'Industrial Establishment' means a factory as defined in Section 2 (m) of the Factories Act, 1948, defines :—

"2 (m) "factory" means any premises including the precincts thereof—

- (i) whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or (a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place)"

(The main emphasis is on the "manufacturing process")

In order to constitute factory, there must be manufacturing process going on in the factory. 'Manufacturing Process' has been defined in Section 2(k) of the Factories Act, 1948 which reads as under :—

"(k) "manufacturing process" means any process for :—

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal ; or
- (ii) pumping oil, water, sewage or any other substance ; or
- (iii) generating, transforming or transmitting power ; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding , or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels ; or
- (vi) preserving or storing any article in cold storage."

M.W. No. 1 in cross-examination has said that the Forest Corporation deals with Kendu Patra & Timber and collection of Sal Seeds.

It is in the evidence that the Corporation is being managed by the Managing Director and it is registered under the Companies Act, it has a Memorandum of Association with

Board of Directors headed by the Chairman. The post of Managing Director and Chairman amalgamated and it is called as "Chairman-cum-Managing Director". The Managing Director supervises and controls the work of the Corporation and he looks to the services of the employees of the Corporation. Although the working places are located in different stations and zones, but they constitute an integrated whole and form specific unit of the Corporation.

12. In *Ami Chand Vrs. Uttaranchal Forest Development Corporation and three others*, reported in 2004-III-LLJ, Page 60, the High Court of Uttaranchal have held thus :—

"HELD : Petitioner-workmen of respondent-Corporation impugned in this petition the termination of their services and sought direction for reinstatement with continuity of service. The High Court allowed the petition. It held the respondent was an industrial establishment and it had to follow Section 25-N of the Industrial Disputes Act, 1947 while effecting retrenchment. As the section had not been followed in the impugned retrenchment, it was held to be void *ab initio* and the workmen entitled to reinstatement with continuity of service but without back wages."

In view of the settled principles, the Orissa Forest Development Corporation is an 'Industrial establishment' and therefore while effecting retrenchment, the provisions of Section 25-N of the Act will have to be followed. In the present case, I found that there is a violation of the provisions of the Industrial Disputes Act.

13. Rule 82 (2) of the Orissa Industrial Disputes Rules, 1959 reads as follows :—

"In an industrial establishment to which Chapter V-B of the Act applies, and in respect of which the Central Government is not the appropriate Government.

- (i) Application under sub-section (1) of Section 25-N for retrenchment shall be made by the employer in Form S-1 and be filed before the State Government or such authority as may be specified by the State Government in triplicate and copy of the same shall also be served simultaneously on the workmen concerned either personally or by registered post with acknowledgement due with copy to the Labour Commissioner, Orissa and the Local Conciliation Officer. The date on which the application is filed before the State Government or the authority shall be deemed to be the date on which the application is made for the purpose of sub-section (4).
- (ii) The employer concerned shall furnish to the State Government or the authority before whom the application for permission for retrenchment has been made under sub-section (1) of Section 25-N such further information as it considers necessary for arriving at a decision on the application and to communicate its permission or refusal to grant permission within the period specified in sub-section (4) of Section 25-N.

- (iii) The State Government or as the case may be, the authority specified by the State Government under sub-section (1) of Section 25-N, after making such enquiry as it thinks fit in accordance with the provisions of sub-section (3) of Section 25-N, shall issue an order either granting or refusing to grant permission for retrenchment for reasons to be recorded in the said order to the employer and the workmen concerned by registered post with acknowledgement due in form S-2 with copy to Secretary to Government, Labour & Employment Department, Bhubaneswar, Deputy/Assistant Labour Commissioner of the concerned Zone, Local Conciliation Officer and Director fo Employment, Orissa, Bhubaneswar."

It appears that the provisions laid down have not been followed.

14. It is submitted by the workman that persons junior to him working in the same category of work have been retained in preference to the workman. In support of it, he produced Exts. 3 series, 4 and 5. In Para. 9 of the affidavit evidence in chief of M.W. No. 1, Exts. S series, 4 and 5 have been explained. According to the management, such orders relate to the person working in different divisions and of different categories. There is no cross-examination on the point. In view of the aforesaid materials on record, it is clear that the workman has failed to establish that aspect.

For the forgoing reasons, I hold that the retrenchment order, as said above, is not legal.

ISSUE NO. 2

15. The case of the management is that there was substantial reduction of workload due to ban on forest felling imposed by the Government, collection of dead, fallen or dry trees from the protected and reserved forest. The Choudwar Saw Mill was surrendered to the Principal Chief Conservator of Forests for its remaining idle for non-availability of timber. In order to make an assessment of the workload and the staff position, the matter was referred to M/s Tata Consultancy Services. The expert body suggested surplus employees to the extent of 3,281. The report is marked as Ext. J & J/1. It is in the evidence of M.W. No. 1 that the Corporation is running in loss. He has proved the profit and loss account marked as Ext. S. Due to acute dearth of work, the management was compelled to retrench the workman. The workman has not challenged the aforesaid facts seriously. As said above, the workman initially worked for some period and left the job. He was engaged fully in the year 1992-93. There was a long gap of 13 years from the date of order of removal. Even if he is reinstated after 13 years, he will be engaged as a casual labourer on daily rate basis. It has been observed in the case of Dal Chand and 5 others Vrs. Judge, Labour Court and others, reported in 2004—III-LLJ, Page. 38 as follows :—

"HELD : In these several appeals, the question was whether refusal of reinstatement to the affected workman and award of compensation in lieu thereof

was justified or not. Referring to decisions on the point, and Section 11-A of Industrial Disputes Act, 1947, the High Court held in all these appeals the impugned orders were justified and no interference was called for. There were cases where the concerned workman either worked as Casual Labour and only for a brief period or the project, where he worked had ceased to exist, coupled with considerable delay in raising the issue."

Their Lordships while observing so referred to several cases of the Hon'ble Supreme Court. In view of the above observation and given circumstances, I find there exists good reasons for refusing reinstatement and granting compensation in lieu thereof. Hence, reinstatement is refused and a compensation of Rs. 75,000 (Rupees seventy five thousand) only is granted in lieu thereof.

The reference is answered accordingly.

Dictated and corrected by me.

Sk. JAN HOSSAIN

8-1-2007

Presiding Officer

Industrial Tribunal, Bhubaneswar

Sk. JAN HOSSAIN

8-1-2007

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government